

REMARKS

Applicants have now had an opportunity to carefully consider the Examiner's comments set forth in the Office Action of November 26, 2008. Claims 1 and 2 are amended. Claims 1-11 are currently pending. Claim 11 is new.

Reconsideration of the Application is respectfully requested.

I. The Office Action

Claims 1 and 7-8 are rejected under 35 U.S.C. 112, second paragraph.

Claims 1-3, 7, 4-6, and 8-10 are rejected under 35 U.S.C. 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Jacobsen et al. (U.S. Patent 5,391,371).

Claims 1-3, 7, 4-6 and 8-10 are rejected under 35 U.S.C. 102(e) as being anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Henriksen et al. (U.S. Patent 6,610,519).

Claims 1-2, 4-5 and 8 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Backers (U.S. Pub 2004/0047897).

Claims 3, 6-7 and 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bakers in view of De Lima et al. (U.S. Patent 6,403,549) and Jorgensen et al. (U.S. Patent 6,924,133).

II. Rejection of Claims 1 and 7-8 Under 35 U.S.C. 112, Second Paragraph

Claims 1 and 7-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for allegedly failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner asserts that parentheses in the claims are indefinite. Applicant is uncertain as to which claims the Examiner is rejecting since only claim 2 has a parentheses. Therefore, Applicant presumes that the Examiner meant to reject claim 2. Claim 2 has been amended to remove the parentheses in the claim. As such, it is respectfully requested that the §112 rejection be withdrawn.

III. Rejection of Claims 1-3, 7, 4-6 and 8-10 Under 35 U.S.C. 102(b) or 103(a)

Claims 1-3, 7, 4-6 and 8-10 stand rejected under 35 U.S.C. 102(b) as being anticipated by

or, in the alternative, under 35 U.S.C. 103(a) as being obvious over Jacobsen et al. (U.S. Patent 5,391,371). Applicant respectfully submits that this rejection should be withdrawn because Jacobsen et al. does not teach or fairly suggest all of the limitations of the rejected claims.

Independent claim 1 recites an animal food additive for economically useful animals which are pregnant, lactating, being fattened or raised, with a fraction of fibrillated, cellulose-containing fibers. The additive comprises a crude fiber concentrate of fibrillated lignocellulose. According to the Examiner, Jacobsen teaches an animal feed additive that is granulated and includes cellulose of the type claimed. Although the Examiner recognizes that the reference does not teach the swelling capacity and the water-holding capacity, the Examiner asserts that these physical characteristics are either inherent or rendered obvious. Applicant respectfully disagrees.

Jacobsen describes a pelletized fodder for animals such as birds. The fodder reduces dust, makes it easier for birds to eat, and makes it possible to incorporate small amounts of ingredients to "lock" the fodder mixture. In order to kill Salmonella bacteria, the fodder must be heat treated, causing the enzymes to become unstable. Jacobsen teaches the use of coated T-granulate converted to a fodder and pelletized. The pelletized fodder is then used as animal feed. As amended, claim 1 recites that the additive limits food intake during ad-libitum feeding. Ad-libitum feeding constantly exposes an animal to food. Therefore the subject food additive limits or prevents over-eating and/or keeps an animal at a healthy weight. The crude fiber concentrate of fibrillated lignocellulose has a high and rapid swelling capacity that provides a feeling of satisfaction in the animals and controls eating during ad-libitum feeding. Jacobsen does not teach or suggest such a feature.

Applicant asserts that the rejection under 35 U.S.C. 103(a) is improper. It is not inherent in Jacobsen to teach swelling capacity and water-holding capacity because Jacobsen teaches that the addition of enzymes to pelletized fodder increases digestion. Food that increases digestion would in fact teach against swelling water holding, since food would have to be quickly released. If the fodder was to swell and hold water, an animal's digestion would slow. Moreover, the fact that the Patent Office lacks the resources to measure characteristics by methods such as the Weender analytical method has no bearing on independent claim 1, since it is a feature found in claim 2. Therefore, the rejection of claim 1 is improper.

For at least the aforementioned reasons, Jacobsen fails to teach or suggest the invention as recited in independent claim 1, along with claims 2-3, 7, and 8-10 that depend therefrom. As such, Applicant respectfully request withdrawal of the rejection.

IV. Rejection of Claims 1-3, 7, 4-6 and 8-10 Under 35 U.S.C. 102(e) or 103(a)

Claims 1-3, 7, 4-6 and 8-10 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as being obvious over Henriksen. Applicant respectfully submits that the rejection should be withdrawn because Henriksen does not teach or fairly suggest all of the limitations of the rejected claims.

According to the Examiner, Henriksen teaches an animal feed additive that is granulated and includes cellulose of the type claimed. Although the Examiner recognizes that the reference does not teach the swelling capacity and the water-holding capacity, the Examiner asserts that these physical characteristics are either inherent or rendered obvious. Applicant respectfully disagrees.

Henriksen teaches a solid phytase composition including an enzyme having a phytase activity that is stabilized by a lactic acid source. The composition is then added to animal feed. As stated above, claim 1 has been amended to recite that the additive limits food intake during ad-libitum feeding. Applicant asserts that Henriksen fails to teach or suggest such a feature.

Moreover, Applicant asserts that the rejection under 35 U.S.C. 103(a) is improper since it is not inherent in Henriksen to teach a composition with swelling capacity and water-holding capacity. Henriksen is directed to reducing the anti-nutritional effects of phytic acid. Henriksen is not directed to increasing swelling and water-holding capacity in animal feed to limit food intake during constant food exposure. By way of example only, applicant asserts that the recited food additive can be present in a percentage of 0.5-8% of the total weight of the animal food. This percentage of additive has been found appropriate to cause swelling and water retention, causing a full feeling. Henriksen does not include any indication of what fraction of the total animal feed weight is comprised of Arbocel. Without such information, there is no way to know what effect the Arbocel has on the animal feed, and it is improper to assume the Arbocel causes water retention and swelling simply because it is present in some degree.

Accordingly, it is respectfully submitted that independent claim 1 (along with claims 2-3, 7, 4-6 and 8-10 that depend therefrom), distinguish patentably over Henriksen and are in condition for allowance.

V. Rejection of Claims 1-2, 4-5 and 8 Under 35 U.S.C. 102(e) or 103(a)

Claims 1-2, 4-5 and 8 are rejected under 35 U.S.C. 102(e) as being anticipated by or, in the alternative, under 35 U.S.C. 103(a) as being obvious over Backers (U.S. Pub. 2004/0047897). Applicant respectfully disagrees.

Backers relates to feedstuff containing additives of pure finely-divided cellulose. Backers is focused on improving the known feeds for the raising of domestic animals. As stated above, claim 1 has been amended to recite that the additive limits food intake during ad-libitum feeding. Applicant asserts that Backers fails to teach or suggest such a feature.

Under 35 U.S.C. 103(c)(1), subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f) and (g) of subsection 102, shall not preclude patentability under 35 U.S.C. 103 where the subject matter and claimed invention were, at the time of the invention, owned by the same person or subject to an obligation of assignment to the same person. The subject application was assigned to J. Rettenmaier & Söhne GmbH + Co. KG, on May 18, 2005. Backers was similarly assigned to J. Rettenmaier & Söhne GmbH + Co. KG on March 11, 2004. As such, Backers is not a patent (application) by another and does not qualify as prior art under 35 U.S.C. 103(a). As such, the rejection should be withdrawn.

VI. Rejection of Claims 3, 6-7 and 9-10 Under 35 U.S.C. 103(a)

Claims 3, 6-7 and 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Backers in view of De Lima et al. (US 6,403,549) and Jorgensen et al. (US 6,924,133). As referred to above in Section V, Backers does not qualify as prior art. Since Backers is the primary reference used in the rejection, the rejection no longer holds merit. As such, the rejection should be withdrawn.

Attached hereto is a one-month extension of time for responding to the above-referenced Office Action.

CONCLUSION

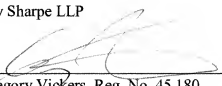
For the reasons detailed above, it is respectfully submitted all claims remaining in the application (Claims 1-11) are now in condition for allowance.

Respectfully submitted,

Fay Sharpe LLP

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Date



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